

AN ORDINANCE TO STRIKE, RE-ADOPT AND REPLACE CHAPTER 42 OF THE CITY OF JOHNS CREEK CODE OF ORDINANCES (SOLID WASTE) AND AUTHORIZE THE SOLID WASTE SERVICES AND PRACTICES FOR THE CITY OF JOHNS CREEK; TO ESTABLISH A LEVEL OF SOLID WASTE SERVICE; PROVIDE FOR THE SCOPE AND NATURE OF THE OPERATION PROVIDED BY PRIVATE HAULERS; ESTABLISH LANGUAGE TO SOLICIT BIDS FOR A PREFERRED SOLID WASTE HAULER; ESTABLISH A FRANCHISE FEE PROVIDING FOR THE COLLECTION AND DISPOSAL OF GARBAGE, SOLID WASTE, RECYCLABLES, AND REFUSE; AND FOR OTHER PURPOSES.

WHEREAS: The City of Johns Creek has adopted a Solid Waste Management Plan in accordance with O.C.G.A. § 12-8-20, The Comprehensive Solid Waste Management Act of 1990 (The Act) and;

WHEREAS: The Johns Creek Solid Waste Management Plan creates a plan to reduce the city's waste stream in accordance with the dictates of The Act and;

WHEREAS: The Charter of the City of Johns Creek authorizes the City to regulate the collection and disposal of garbage, rubbish, and refuse by others and;

WHEREAS: The City of Johns Creek seeks to provide standards of operation, management, regulation, and oversight in the provision of solid waste services both in its collection and disposal within the corporate city limits; and

WHEREAS: The City of Johns Creek seeks to establish an Environmental Management Fee for the purpose of creating a fund account to address the costs associated with solid waste management and to further create an Environmental Management Program; and

WHEREAS: It is in the interest of the city and it's citizens to offer non exclusive contracts and/or exclusive contract(s) on such terms and conditions as to provide the city with the controls and options necessary to provide for the public good and to meet the mandates of the Act and the Johns Creek Solid Waste Management Plan;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOHNS CREEK, that Ordinance 2006-11-02 as well as Chapter 42 of the City of Johns Creek Code of Ordinances are hereby deleted in their entirety and replaced in their entirety to read as follows:

CHAPTER 42. SOLID WASTE

ARTICLE I. IN GENERAL

Sec. 42-1. Purpose and Intent.

This ordinance regulates the collection and disposal of waste and garbage, including, but not limited to all waste byproducts of manufacturing or commercial establishments, cinders and ashes from commercial boilers, and cardboard and wooden boxes, crates and barrels, as well domestic waste including meat, vegetable and fruit scraps, cans, bottles, paper, cardboard, rags, ashes, and other such waste material ordinarily disposed from residences, churches, schools, small business establishments, and other such

places. Animals, fowl, and fish entrails, bones and carcasses whether in whole or in part, from business establishments such as slaughterhouses and meat and fish markets shall not constitute "garbage", but shall constitute "other waste." Waste also includes animal, fowl, and fish excrement, entrails, bones, and carcasses in whole or in part and dead animals, and any other refuse material not otherwise classified herein. Further, this article regulates the collection and disposal of recyclable materials including but not limited to those items contained in the List of Acceptable Recyclable Materials, as attached hereto, a current copy of which may be obtained from the City Clerk's office.

Sec. 42-2. Definitions

- (a) For the purpose of this Chapter, whenever inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined in this Section or otherwise in this Chapter, in the City's adopted Solid Waste Management Plan (SWMP) as amended at any time, or in Chapter 1 of this Code shall be given their common and ordinary meaning.
- (b) The following words, terms, phrases and their derivations shall, in this ordinance, have the meaning given in this section.

"Bio Medical Waste Hauler" shall mean a company, business establishment, or individual that is contracted with or by the City of Johns Creek to enter the City, use its infrastructure in order to provide on-demand waste collection and disposal services for medical waste to include but not limited to any device used to puncture or lacerate skin, and to then dispose of them at an appropriate, approved, and registered facility doing business in the State of Georgia.

"Bulky Trash" shall mean solid waste materials that cannot fit into a customary waste collection container as described in this ordinance. Such waste would include but is not limited to appliances, mattresses, chairs, furniture, tires, and other large items.

"Bulky Trash Hauler" shall mean a company, business establishment, or individual that is contracted with or by the City of Johns Creek to enter the City, use its infrastructure in order to carry out their business to collect materials that typically include large items that do not fit into a customary sized waste container including but not limited to appliances, mattresses, chairs, furniture, tires, and other large items and to then dispose of them at an appropriate, approved, and registered facility doing business in the State of Georgia.

"City Clerk" shall mean the City Clerk or City Secretary of the City.

"Commercial Refuse" shall mean any garbage, trash, rubbish and used materials resulting from the operation of a business, company, corporation, or other commercial entity within a

structure zoned for such business; or construction or remodeling work generated by a person or persons associated with preparing a structure for such use.

“Company” or “Solid Waste Hauler” or “Hauler,” whether used in the singular or plural tense, shall mean any entity organized to provide collection and disposal of all putrescible and non putrescible solid, semi-solid, and liquid wastes within the City of Johns Creek, whether on a one-time contract basis or a recurring basis.

“Customer” shall mean any firm, person, entity, corporation or organization that contracts with the Company for the collection of Residential and/or Commercial Refuse and Waste, whether such service is used by said firm, person, entity, corporation, organization or others

“Environmental Management Fee” shall mean a set of fees assessed on the registered solid waste haulers of the City. Such fees may include those assigned to single family residential, multi-family residential, and revenues collected from commercial establishments.

“Environmental Management Improvement Program” shall mean an annual program where improvements are funded to provide for but not limited to pothole repair, street curb repair, infrastructure repair, beautification programs, and city-wide solid waste initiatives. This program may be funded by the Environmental Management Fees collected from the City’s registered solid waste haulers.

“EPD” shall mean the Environmental Protection Division of the State of Georgia’s Department of Natural Resources.

“Exclusive Contract” shall mean an Agreement for a certain period of time between the City of Johns Creek and a private hauler(s) to exclusively collect and dispose of solid waste materials, its byproducts, and recyclable materials and other waste materials as identified in the Agreement. Such Agreement is granted through a bid process pursuant to the City’s Purchasing Policy to a business establishment(s) that will be the sole provider(s) of service to the residential and/or commercial community within the city limits of Johns Creek.

“Garbage” shall mean putrescible wastes including kitchen and table food wastes; animal or vegetable wastes resulting from the storage, preparation, cooking, processing or handling of foodstuffs; nonputrescible wastes that are mixed in the same container with or contaminated by putrescible wastes; small dead animals not exceeding five pounds in weight; and any putrefactive or easily decomposable waste material that is likely to attract flies, vermin, birds or rodents. For purposes of this definition garbage does not include materials that are separated and set aside for recycling or composting and does not include hazardous material, household hazardous material, or sewage or sewage sludge

or human or animal excrement or yard waste.

"Gross Receipts" shall mean the total amount collected by the Solid Waste Hauler from any and all Customers for services rendered under authority of this Ordinance.

"Hazardous Waste" shall mean waste in any amount which is defined, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriate State agency or pursuant to Federal or State law, or waste in any amount which is regulated under Federal or State law. For purposes of this agreement, the term hazardous waste shall also include motor oil, gasoline, paint, paint cans, and solvents.

"Hazardous Waste Hauler" shall mean a company, business establishment, or individual that is contracted with or by the city of Johns Creek to enter the City, use its infrastructure in order to provide on-demand waste collection and disposal services for hazardous waste materials as defined herein. Such hauler shall have the necessary equipment and vehicles to transport such hazardous materials through the city to insure the safety of its citizenry.

"Junk Hauler" shall mean a company, business establishment, or individual that is contracted with or by the City of Johns Creek to enter the City, use its infrastructure in order to provide on-demand waste collection services in terms of bulky trash, white goods, furniture, or other items customary to cleaning out or remodeling residential and/or business establishments and then to dispose of them at an appropriate, approved, and registered facility doing business in the State of Georgia.

"Multi-Family Residential", for purposes of this ordinance, shall also include multiple family residential units.

"Non-Exclusive Contract" shall mean a contract for a certain period of time granted by the City of Johns Creek with a private waste hauler pursuant to this Chapter to permit the non-exclusive collection and disposal of solid waste materials and byproducts including but not limited to recyclable materials.

"Putrescible Waste" shall mean such waste that is capable of decaying or rotting.

"Recycle Container" shall mean the container supplied by the city's registered hauler for the purpose of the collection and disposal of recyclable materials. Such container shall be a minimum of 18-gallon, 30-gallon, or 65 gallon.

"Recycling Hauler" shall mean a company, business establishment, or individual that is contracted with or by the City of Johns Creek to enter the City, use its infrastructure in order to carry out their business to collect recyclable materials and to then dispose of them at an approved and registered recycling center doing business in the State of Georgia.

"Residential and Commercial Refuse and Waste" shall mean any refuse, rubbish, garbage or waste material that is not Hazardous waste, as well as all Commercial and Residential Refuse. Residential and Commercial Refuse and Waste shall include materials designated for recycling and yard/landscape waste, and all construction and demolition waste.

"Residential Hauler" shall mean a company, business establishment, or individual that is contracted with or by the City of Johns Creek to enter the City, use its infrastructure in order to carry out their business to collect and dispose of residential garbage waste, recyclable materials, yard trimmings, and bulky trash.

"Residential Refuse" shall mean all household and domestic garbage, trash and rubbish and used materials resulting from inhabiting a residential unit; or construction or remodeling work generated by a person or persons dwelling in a Residential Unit.

"Residential Unit" shall mean a dwelling unit designed for, or, in the normal course of use, occupied by a person or a family, e.g. a single family house, duplex apartment unit or triplex apartment unit that is situated in a building having less than four (4) such separate residential units. For the purpose of this Chapter, a "Residential Unit" shall not include any mobile home park, apartment building, condominium, nursing home, or similar residential, convalescent or multi-family dwelling, whether of single or multi-level construction, consisting of four (4) or more dwelling units.

"Roll-off Container Hauler" shall mean a company, business establishment, or individual that is contracted with or by the City of Johns Creek to enter the City, use its infrastructure in order to carry out their business to collect waste materials from roll off containers, dumpsters, or compactors and to then dispose of them at an appropriate, approved, and registered facility doing business in the State of Georgia.

"Rules and Regulation Manual" shall mean a manual created by the Public Works Director or his designee that sets forth the rules and regulations that the City of Johns Creek has established in order to provide for the collection and disposal of waste, recycling, yard trimmings, bulky trash and other forms of waste as described in this ordinance.

"Single Stream Recycling" shall mean a method of recycling in which all recyclable materials commingled and are collected and disposed off in the same container(s). An example would be to mix papers, plastics and glass bottles in the same recycling container.

"Solid Waste Manager" shall mean the person responsible to manage and implement the city solid waste management plan, the City solid waste program, and the day to day operation of the solid waste program of the City of Johns Creek.

"Street" or "Alley" shall mean all publicly dedicated or maintained streets, alleys, easements and rights-of-way, a portion of which is open to use by the public of vehicular travel.

"Waste Container" shall mean the container supplied by a city-registered hauler that is a minimum of 65 gallons or 95 gallons in capacity and on a wheeled-base with an attached lid. The purpose of such container is to be used to collect solid waste for collection and disposal.

"Yard Trimmings Hauler" shall mean a company, business establishment, or individual that is contracted with or by the City of Johns Creek to enter the City, use its infrastructure in order to carry out their business to collect yard trimming materials such as but not limited to limbs, leaves, branches, or plant material and to then dispose of them at an appropriate, approved, and registered facility doing business in the State of Georgia.

Sec. 42-3. Responsibility of the City to Provide for the Collection of Waste.

The city has the responsibility to provide for and make available the collection of solid waste by either a non exclusive contract, exclusive contract for services, or through services provided by city forces pursuant to the Comprehensive Solid Waste Management Act of 1990.

Sec. 42-4. Responsibility of Citizens and Businesses.

It shall be the responsibility of each citizen both residential and commercial to be served by a waste hauler from the city's approved, registered, and contracted solid waste list or from city operated services. Failure to be served by either an approved, registered, and contracted city hauler or from services offered by the city's own manpower shall result in a violation of this ordinance.

Sec. 42-5. Authority, Administration, and Enforcement.

- (a) Authority is hereby granted to the City Manager or his designee to carry out the requirements of this Chapter.
- (b) The Public Works Director or designee is hereby authorized to administer the day-to-day operation of the Solid Waste Program, as well as enforce this Chapter as well as the rules and regulations of the City's Solid Waste Management Plan.
- (c) Upon adoption of this ordinance, the Public Works Director or his designee is hereby authorized and directed to create the rules and procedures for the purpose of implementing this ordinance in order to carry out the practice of recycling, bulky trash, yard trimmings, and waste collection and disposal within the city limits of Johns Creek.

Sec. 42-6 – 42-18. Reserved.

ARTICLE II. RULES AND REGULATIONS

Sec. 42-19. Establishing a Basic Level of Service.

- (a) Residential: the City's Basic Level of Service for residential units shall be as follows: A minimum of once a week garbage pick-up, once a week recycling pick up, once a week yard trimmings, and once a month bulky trash pick up.
- (b) Commercial: It is hereby acknowledged that the Johns Creek business community has individual solid waste needs for each of their respective establishments. At a minimum, each business establishment shall be provided basic garbage pick up of once a week and recycling once a week. Frequency of yard trimmings and bulky trash pick up shall be provided to each business customer and provided through the dictates of individual contracts between the solid waste hauler and respective business establishment. Each hauler serving business establishments shall present to the City, at the time of their initial contract and registration, and subsequent renewal contracts the service level they are providing to each of their business customers. For purposes of commercial collection and disposal, a commercial business establishment may use multiple haulers to perform individual waste collection and disposal services.
- (c) At no time shall the level of service provided by any hauler for commercial waste be such that waste and/or recyclable materials overflow the container for which it is to be disposed or create any odors that would otherwise be deemed a public nuisance from the inability to properly collect said materials in a timely manner consistent with the disposal rate of any such business establishment.
- (d) For purposes of collection and disposal of waste and recycling, multi-family developments may use separate waste haulers to perform individual services necessary to serve the overall development.

Sec. 42-20. Haulers to Provide Recycling Services.

- (a) It shall be required that each registered solid waste hauler provide for the collection and disposal of recyclable materials.
- (b) Each registered hauler shall collect those recyclable materials as required by the City and listed on the Approved Recycle Materials List.
- (c) All recycle services shall be single stream and haulers shall not require any residential citizen to separate their recyclable materials.
- (d) Commercial customers may separate their recyclable materials through private contracts and agreements with the hauler servicing their establishment(s).

Sec. 42-21. Grant of Non Exclusive Contract.

- (a) The City is hereby authorized to enter into a private, non-exclusive contract for solid waste services for purposes of collecting and disposing of garbage, refuse, recyclable materials, yard trimmings, bulky trash, hazardous waste, and biomedical waste. This non-exclusive contract

shall be pursuant to the terms set forth herein to use the public streets, alleys, roads, and thoroughfares within the City for the purpose of operating and engaging in the business of collecting and disposing of Waste. This shall include but not limited to, contracting with residential and/or commercial customers and providing services pursuant to the Agreement, placing and servicing containers, operating trucks, vehicles and trailers, and such other operations and activity as are customary and/or incidental to such business and service.

- (b) Such non-exclusive contract shall have a term of no longer than one (1) calendar year, terminating on December 31 of that same year. Renewals shall be for a period of one year and said applications shall be submitted to the Public Works Director or his designee.
- (c) The City may bid out services for a particular waste collection and disposal service in addition to permitting non exclusive contracts for other waste and disposal services.
- (d) No person, business establishment, or entity shall practice or engage in the collection or disposal of solid waste and/or recyclable materials without first having an executed Agreement with the City granting permission to perform such service.

Sec. 42-22. Grant of Exclusive Contract.

- (a) The City is hereby authorized to bid out the collection and disposal of solid waste services exclusively to a preferred hauler(s) for purposes of contracting for residential solid waste services including but not limited to garbage, recycling, yard trimmings, and bulky trash. Under such executed Agreement, the preferred hauler(s) are permitted to use the public streets, alleys, roads, and thoroughfares within the City for the purpose of operating and engaging in the business of collecting and disposing of Waste.
- (b) Such exclusive contract can include all of the waste collection and disposal services or may only be an exclusive contract for certain and specified services.
- (c) Such exclusive contract shall have a term of no longer than one (1) calendar year, terminating on December 31 of that same year. Renewals shall be for a period of one year and shall require approval by the Mayor and City Council, unless automatic renewal terms are agreed to by the City as a term of the Agreement.

Sec. 42-23. Establishment of Mandatory Registration and Agreement.

- (a) All companies providing solid waste services inside the city limits of Johns Creek whether for residential or commercial purposes shall be registered and operate under an approved exclusive or non-exclusive contract with the City, effective as of the date of adoption of this Ordinance.
- (b) Failure to register and operate under an executed Agreement with the City shall be a violation of this ordinance.
- (c) Any solid waste hauler providing services inside the City of Johns Creek as of the effective date of this Ordinance who does not operate under a contract with the City and does not

register and enter into a contract with the City for provision of said services for calendar year 2010 by, at the latest, December 31, 2010 shall be ineligible to register and contract with the City for said services for calendar year 2011.

Sec. 42-24. Registration Decals.

- (a) Upon execution of the Agreement with the City of Johns Creek, all vehicles used in the operation of collecting and disposing of residential or commercial solid waste, including but not limited to garbage, recyclables, bulky waste, junk, yard trimmings, bio medical waste, or hazardous materials shall be marked with a stencil, decal, or adhesive sticker stating they are a registered solid waste contractor for the City.
- (b) The Public Works Director shall prepare the standards for such stenciling, decals, or adhesive stickers with the size, color, design, and placement on each company vehicle operating inside the city limits.
- (c) Upon the execution of an Agreement, the City of Johns Creek shall provide the necessary decals and/or adhesive stickers.

Sec. 42-25. Establishment of Johns Creek Solid Waste Webpage and Education Materials.

The City shall create and host its own Solid Waste Webpage to include, but not limited to, a list of approved and contracted waste haulers and their fee charged for the City's basic residential level of service, the local representative for the respective registered hauler and their contact information, and the best practices information to aid and assist the general public in the reduction of the City's waste stream. Further, the Public Works Director or his designee shall develop print media materials that will serve as promotional and educational materials that will be used as a tool to inform the public on the practice of solid waste management.

Sec. 42-26. Establishment of Public Listing of Approved and Certified Haulers in the City.

The city shall cause to publish on the Johns Creek Solid Waste Website the list of approved and contracted waste haulers for both residential and commercial services. Said list shall be published annually on the first day of each calendar year.

Sec. 42-27. Establishment of Geographic Zones and Days of Service.

- (a) Geographic zones of the City are hereby authorized to be established and are so delineated by physical boundaries and natural features and are further depicted and shown on the Solid Waste Geographic Zone Map which is attached hereto, a current copy of which may be obtained from the City Clerk. The purpose of establishing such zones is to reduce the amount of solid waste truck traffic within the City, to reduce the amount of wear and tear on the City's infrastructure, and to set aside areas of the City that can be better managed and regulated.
- (b) Upon the direction of the Mayor and City Council, the City Manager or designee shall cause implementation of such zones with reasonable notice, but no less than ninety (90) days from establishment of such zones, to the Solid Waste Haulers.

- (c) Upon the implementation of the geographic zones, the City shall also designate a specific day(s) of the week that solid waste collection can be preformed for each zone by specific day.
- (d) Upon implementation of such zones and days of service, the City shall also notify the community by way of customary forms of communication such as, but not limited to, website updates, written correspondence, media coverage and/or outlets and other electronic forms of communication.

Sec. 42-28. Establishment of Residential Container Sizes.

- (a) Upon adoption of this ordinance, the following container sizes for residential garbage and recycling shall be established. All haulers registered in the City of Johns Creek are responsible and shall provide, deliver, maintain, and replace when necessary a wheeled-garbage container and a wheeled- recycling cart for single-family homes and a recycling bin for each multi-family unit.

(1) Residential

(i) Single Family Homes

- A. For purposes of garbage collection, all registered haulers shall provide a choice of two minimum sized containers. They shall include either a 65 gallon or a 90 gallon cart on wheels.
- B. For purposes of recycling collection, all registered haulers shall provide a choice of two minimum sized containers. They shall include either a 30 gallon or a 65 gallon cart on wheels.

(ii) Multi Family Homes

- A. For purposes of garbage collection, all registered haulers shall offer a roll-off and/or trash compactor on-site commensurate in size to the number of units served within the complex. The Public Works Director or his designee shall approve the size of any roll-off/and or trash compactor.
- B. For purposes of recycling collection, all registered haulers shall provide an 18-gallon bin for each unit. The size of the recycling receptacle shall be commensurate in size to the number of units served within the complex. The Public Works Director or his designee shall approve the size of such receptacle.

- (b) Said containers shall be made available to the citizenry by no later than March 1, 2011.

Sec. 42-29. Regulation of Containers

- (a) All containers shall be constructed and maintained according to good industry practice;

- (b) All containers shall be equipped with stable covers to prevent blowing or scattering of refuse while being transported for disposal of their contents;
- (c) All containers, save and except those being used for the purpose of collecting and storing rubble, building and scrap construction materials, shall be equipped with covers suitable to prevent blowing or scattering refuse and access to the container by animals while the container is at the site designated by Customer;
- (d) All containers shall be periodically cleaned, maintained, serviced and kept in a reasonably good state of repair, to prevent the unreasonable accumulation of refuse residues, to avoid excessive odor and harborage for rodents and flies resulting from excessive residues remaining after collection of containers;
- (e) All containers shall be clearly marked with the Company's name and telephone number in letters not less than three (3) inches in height; and
- (f) All containers, when stored, shall not be on public rights of way and shall be located so as to not interfere, block, obstruct or impede the normal use of any sidewalk, street, alley driveway or fire lane, or to block, obstruct or impede sight distance at street, road or alley intersections. Such containers shall be removed from the collection point within twenty-four (24) hours of service.

Sec. 42-30. Solid Waste Haulers to Supply Residential Containers

Each registered hauler serving the residential community in the City of Johns Creek shall be required to provide a garbage container to their customer(s).

Sec. 42-31. Solid Waste Haulers Name on Containers

- (a) Each person and/or business establishment who is registered and contracted by the City to collect and dispose of solid waste inside the city limits of Johns Creek shall cause to have their company name and contact phone number permanently placed on every solid waste container and recycling container.
- (b) Such company name and contact phone number shall be clearly visible and legible and be no less than three (3) inches in height and either applied by stencil, waterproof adhesive sticker, or painted on the container.
- (c) For each recycling container and bin, the Hauler shall apply by stencil or waterproof adhesive sticker stating the list of recyclable materials, as found on the City's List of Acceptable Recyclable Materials.

Sec. 42-32. Establishment of an Environmental Management Fee

Upon adoption of this ordinance, the City of Johns Creek may establish an Environmental Management Fee for the purpose of funding the Environmental Management Improvement Program which may be assessed on both commercial and residential collection and disposal solid waste activities in the City as follows:

(a) Commercial

- (i) The Mayor and City Council may establish an environmental management fee assigned to all haulers collecting and disposing of commercial solid waste, recyclables, bulky trash, yard trimmings, bio-medical, hazardous waste, or other forms of waste.
- (ii) Said environmental management fee shall be remitted to the City of Johns Creek along with the hauler's quarterly report including but not limited to customer counts, customer revenue collected, customer addressing, tonnage of waste and recyclables collected.
- (iii) The environmental management fee shall be five (5) percent of the total revenues collected for commercial customers served by the respective hauler(s).

(b) Residential

- (i) Upon adoption of this ordinance, the City of Johns Creek may establish environmental management fees for Residential Solid Waste Collection and Disposal by Resolution. Multi-family Residential fees shall be based on a per unit cost.
- (ii) Such fees shall be remitted to the City each quarter along with the hauler's quarterly report including, but not limited to customer counts, customer addressing, tonnage of waste and recyclables collected.
- (iii) Should any hauler pass this fee onto the residential customer they shall do so by noting on the billing statement the following: 'Environmental Management Fee' and include the exact amount that is being passed on to said customer.
- (iv) Further should the hauler elect to include such fee statement as described in Sec.42-32(b)(iii) on their billing statement, they shall hereby be prohibited from billing more than 50 percent of said established fee to the customer.

Sec. 42-33. Establishment of Annual Environmental Management Improvement Program.

- (a) For each fiscal year, the Director of Public Works shall present to the City Manager the Environmental Management Improvement Project List, which is to be submitted to the Mayor and City Council for approval.
- (b) The Environmental Management Improvement Program may be funded from fees collected annually from the solid waste environmental management fees. Such programs shall come from the City's Work Program in the Solid Waste Management Plan. Additionally, the operational costs associated with the Solid Waste Manager, including compensation, may also be included in the Environmental Management Improvement Program list.
- (c) Within thirty (30) days of City Council approval, the Director of Public Works shall cause to post on the Johns Creek Solid Waste Webpage the annual Environmental Management Improvement Projects List which may be funded by the collection of both commercial and

residential environmental management fees. Additionally, the Director shall also communicate the same to the citizens of the City through customary media outlets.

Sec. 42-34. Term.

All contracts entered into by a solid waste hauler and the City of Johns Creek shall expire on December 31st of each calendar year and shall not be for a period longer than one year, with annual renewals.

Sec. 42-35. Establishment of Mandatory Recycling at Multi-Family Complexes/Developments.

- (a) Upon adoption of this ordinance all multi-family complexes/developments shall provide for space to accommodate a roll-off and/or compactor container large enough to serve the number of units from said complex to facilitate recycling on the premises.
- (b) All multi-family developments shall have until March 1, 2011 to provide for space to accommodate the roll-off and/or compactor of a size necessary to accommodate the number of units within the respective complex. Compliance with this section shall not be deemed to create a non-compliance with the City's parking regulations as to number of parking spaces required in all multi-family developments existing as of the date of adoption of this ordinance.

Sec. 42-36. Establishment of Performance Bond on Service.

- (a) A performance bond shall be posted with the city by the registered solid waste hauler for the purpose to cover the cost of continued collection and disposal of waste and recyclable materials for the hauler's customers in the event a registered hauler abandons service.
- (b) Each waste hauler shall present said performance bond equal to an amount to cover thirty (30) days of waste collection and disposal at the time of registration and an approved and executed Agreement, or January 1, 2011, whichever is latest. Said amount shall be determined by the Public Works Director.

Sec. 42-37. Establishment of Reporting and Fees

- (a) Reporting
 - (i) Each registered hauler shall report on a quarterly basis to the Public Works Director or his designee all solid waste and recyclable materials collected.
 - (ii) Such report shall include but not be limited to the amount of solid waste and recyclable materials collected in the form of tons, the number of customers served, the customer addressing, and the landfill that received the waste collected.
 - (iii) The quarterly Reports shall be submitted to the Public Works Director or designee by no later than the following dates: April 30, July 30, October 30, and January 30.

- (b) Fees. The City of Johns Creek has the authority to establish fees for the purpose of operating and managing the Solid Waste Management Plan and Program of the City.
 - (i) Non exclusive Solid Waste, Recycling Contracts. The City shall levy fees on haulers with non-exclusive contracts specifically for the disposal and collection of residential and commercial waste services.
 - (ii) Exclusive Solid Waste, Recycling Contracts. The City is hereby authorized to charge a franchise fee for all residential and commercial waste services.

Sec. 42-38. Establishment of Annual Giving Campaign

- (a) The City will establish one week of each year for the purpose of creating an annual giving program that will, instead of collecting recyclables, collect items such as, but not limited to, canned goods, toys, clothing, school supplies, or other materials as determined to provide for those in need.
- (b) During the month of October each year, the City Manager shall recommend to the Mayor and City Council for their approval the charitable organization(s) that will receive charitable donations from the community at-large. The City Manager will announce at this meeting the materials needed by this organization and the parties that will receive such donations.
- (c) The Annual Giving Campaign is strictly voluntary and any citizen is free to not participate.
- (d) All recycling carts will be used for the collection of donated materials. Coordination with all registered and contracted haulers of the City will be made in advance of the announced charitable organization. It shall be the responsibility of the charitable organization to collect the donated goods once collected by the solid waste hauler

Sec. 42-39. Incentive-Based Recycling Program

The City is hereby authorized to develop the standards and specifications of a recycling incentive based program. The purpose of such a program is to reward participation and encourage recycling efforts in order to further reduce the City of Johns Creek waste stream.

- (a) Upon the direction of the Mayor and City Council, the City Manager or designee shall prepare the standards and specifications of said program and present the same for approval to City Council.
- (b) Upon approval by the Mayor and City Council of the standards and specifications for such a program, the City Manager or designee shall prepare the necessary bid documents in order to solicit proposals for such a program.

Sec. 42-40. Scope and Nature of Operation

- (a) *Residential and Commercial Refuse and Waste.* The Solid Waste Hauler may collect and deliver for disposal all Residential and Commercial Refuse and Waste accumulated within the

corporate limits of the City by the Hauler's Customers. The words "refuse", "garbage", "trash" and "waste" when used in this Ordinance are used for convenience and, unless the context shows otherwise, refer to and are limited to Residential and Commercial Refuse and Waste. The Company will furnish the personnel and equipment to collect refuse, provide the services described herein, and as contracted for with its Customers, in an efficient and businesslike manner. The Hauler shall be responsible for billing its customers all fees for services herein established.

- (b) *Service Provided.* Each Hauler shall provide container, bin and other collection service items for the collection of Residential and Commercial Refuse and Waste according to the individual Customer agreements and applicable City regulations and shall make provision for the special collection of such refuse and waste upon request. The Company shall cause or require its equipment, containers and bins to be kept and maintained in a manner to not cause or create a threat to the public health and shall keep the same in a good state of repair. Each Hauler shall be responsible to replace any damaged containers that are in disrepair due to faulty or inferior equipment. The Company shall insure that upon collection any debris that falls from the immediate area of the container is picked up and disposed of appropriately. The Company shall insure that all cans are left in an upright position with lids closed following the collection of waste from said container.
- (c) *Time and days of Collection.* Save and except as provided in this Section, collection shall not start before 7:00 AM or continue after 7:00 PM. Any exception to this rule shall be reviewed and decided on a case by case basis by the City Manager or his designee. Such determination shall be based on the circumstances resulting in an emergency whereby the work necessary to perform is done in such a manner as to safeguard the immediate health, safety, and welfare of the public.
- (d) *Container Placement.* All containers shall be placed no earlier than 24 hours prior to the scheduled pick up and shall be removed no longer than 24 hours following collection of all waste and recycling containers. The same standard shall be used for all bulky trash. Yard trimmings shall be placed no early than 24 hours prior to collection of the same.
- (e) *Holidays.* The Company shall observe such holidays as it, in its sole discretion, determines appropriate.

Sec. 42-41. Vehicles to be Covered and Identified.

- (a) All vehicles used by Company for the collection and transportation of refuse shall be covered at all times while loaded and in transit to prevent the blowing or scattering of refuse onto the public streets or properties adjacent thereto.
- (b) All vehicles shall be clearly marked with the Company's name in letters not less than five (5) inches in height.

Sec. 42-42. Disposal of Refuse.

The registered solid waste hauler shall deliver all Residential and Commercial Refuse and Waste collected by it from its customers within the City, except for materials which the solid waste hauler may select for recovery and recycling, to a disposal facility that is permitted by the EPD to accept such refuse and waste. Rules and regulations governing hours of operation and disposal practices at the disposal

facility will be observed and followed by the Company while engaged in the disposal of refuse pursuant to this Ordinance.

Sec. 42-43. Compliance with Law.

The Haulers shall conduct their operation within the City in compliance with the material provisions of all applicable local, state and federal laws, rules and regulations, and with the general specifications contained in this Ordinance.

Sec. 42-44. Insurance Provided by Company.

- (a) *Minimum Coverage Requirements.* The Haulers shall maintain throughout the term of each Agreement, property damage coverage, general liability insurance, and automobile liability insurance for any vehicles owned or operated by Company, with an insurance company authorized and licensed to do business in the State of Georgia and acceptable to the City, insuring against claims for liability and damages for the benefit of the City. The insurance shall include the City as an additional insured. Property damage coverage insurance under this section shall be a minimum of Five Hundred Thousand and No/100 Dollars (\$500,000). Automobile liability insurance under this section shall, at a minimum, have limits of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000) for bodily injury for each person, and Five Hundred Thousand and No/100 Dollars (\$500,000) for each occurrence, and property damage of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000) for each occurrence and general liability insurance under this section shall be a minimum of One Million Dollars (\$1,000,000) for the protection of the public in connection with:
 - (i) *Property Damage.* Liability to persons or damages to property, in any way arising out of or through the acts or omissions of Company, its servants, agents or employees or to which Company's negligence shall in any way contribute;
 - (ii) *Miscellaneous.* Arising out of any claim or invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation;
 - (iii) *Contractors.* Arising out of Company's operations and relationships with any independent contractor or subcontractor.
- (b) *Employer's Liability.* If the Company is required by Georgia Statute, the Company shall maintain throughout the term of the Agreement resulting from this Ordinance the requisite statutory workers' compensation insurance, and a minimum of One Hundred Thousand and No/100 Dollars (\$100,000) employer's liability insurance.
- (c) *Certificate of Insurance.* The insurance policy, or policies, obtained by each Company in compliance with this section shall be approved by the City Manager in the City Manager's reasonable discretion, and the certificate of insurance for the insurance policy shall be filed and maintained with the City during the term of the Contract resulting from this Ordinance with a copy of the endorsement required under this section to be attached or made a part of such certificate.

- (d) *Endorsements.* All insurance policies maintained pursuant to this Ordinance shall contain the following conditions by endorsement:
 - (i) *Additional Insured.* The City shall be an additional insured and the term "owner" and "City" shall include all authorities, Boards, Bureaus, Commissions, Divisions, Departments and offices of the City and the individual members, officers, employees and agents thereof in their official capacities and/or while acting on behalf of the City.
 - (ii) *Other Insurance Clause.* The policy clause "Other Insurance" shall not apply to the City when the City is an insured on the policy.
 - (iii) *No Recourse.* Companies issuing the insurance policies shall not recourse against the City for payment of any premium or assessment.
- (e) *Increase Requirements.* The City may choose to make reasonable adjustments to the insurance coverage and limits when deemed necessary and prudent based upon changes in statutory law, court decisions, or the claims history of the industry.

Sec. 42-45. Indemnification and Hold Harmless.

Each Company shall agree to indemnify, defend and save harmless the City, its agents, officers and employees, against and from any and all claims by or on behalf of any person, firm, corporation or other entity arising from any negligent act or omission or willful misconduct of the Company, or any of its agents, contractors, servants, employees or sub-contractors, and from and against all costs, counsel fees, expenses and liabilities incurred in or about any such claim or proceeding brought thereon. Promptly after receipt from any third party by City of a written notice of any demand, claim or circumstance that, immediately or with the lapse of time, would give rise to a claim or the commencement (or threatened commencement) of any action, proceeding or investigation (an "Asserted Claim") that may result in losses for which indemnification may be sought hereunder, the City shall give written notice thereof (the "Claims Notice") to the Company provided, however, that a failure to give such notice shall not prejudice the City's right to indemnification hereunder except to the extent that the Company is actually and materially prejudiced thereby. The Claims Notice shall describe the Asserted Claim in reasonable detail, and shall indicate the amount (estimated, if necessary) of the losses that have been or may be suffered by the City when such information is available. The Company may elect to compromise or defend, at its own expense and by its own counsel, any Asserted Claim. If the Company elects to compromise or defend such Asserted Claim, it shall, within twenty (20) business days following its receipt of the Claims Notice (or sooner, if the nature of the Asserted Claim so required) notify the City of its intent to do so, and the City shall cooperate, at the expense of the Company, in the compromise of, or defense against, such Asserted Claim. If the Company elects not to compromise or defend the Asserted Claim, fails to notify the City of its election as herein provided or contests its obligation to provide indemnification under this Agreement, the City may pay, compromise or defend such Asserted Claim with all reasonable costs and expenses borne by the Company. Notwithstanding the foregoing, neither the Company nor the City may settle or compromise any claim without the consent of the other party; provided, however, that such consent to settlement or compromise shall not be unreasonably withheld. In any event, the City and the Company may participate at their own expense, in the defense of such Asserted Claim. If the Company chooses to defend any Asserted Claim, the City shall make available to the Company any books, records or other documents within its control that are necessary or appropriate for such defense.

Sec. 42-46. Transfer, Sale, or Conveyance by Company.

The Company shall not transfer, assign, sell or convey any rights granted under any resulting Agreement from this Ordinance without the prior approval of the Council expressed by ordinance; provided that this section shall not apply to vehicles, replacements, maintenance, upgrades or modifications of equipment, machinery, containers and buildings by Company for the purpose of maintaining and continuing its operation within the City; and provided further that Company may, in its sole discretion and upon reasonable written notice to the City, transfer, assign, sell or convey the Agreement to a wholly owned subsidiary of the Company or to an affiliated entity that is under common control with Company (i.e. has a common parent entity).

Sec. 42-47. Retention of City Police Powers.

The City retains and reserves all of its police powers and the rights, privileges, and immunities that it now has under the law to regulate, patrol and police the streets and public ways within the City, and the granting of any Contract as a result of this Ordinance shall in no way interfere with the improvements to, or maintenance of, any street, alley or public way, and the rights of the City to use said streets, alleys and public ways.

SO ORDAINED, this the 8th day of November, 2010.

Approved:

Michael E. Bodker, Mayor

Attest:

Approved as to Form and Content:

Joan C. Jones, City Clerk

William F. Riley, City Attorney